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No. 91-490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ALFRED H. GREENING, JR.,

Petitioner,

vs.

HONORABLE BEN MILLER, Chief Justice, Illinois Supreme Court, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Supreme Court of Illinois can summarily remove the name of an individual from the Master Roll of Attorneys authorized to practice law in the State for failing to comply with an administrative requirement, the payment of an annual attorney registration fee, established in relation to the Court's inherent authority to regulate the practice of law?

II. Whether Petitioner was afforded due process guarantees during his prosecution for indirect criminal contempt of the Supreme Court of Illinois for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys authorized to practice law in the State?

PARTIES TO THE PROCEEDING BELOW

The Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (Commission) by its Administrator, the original complainant and relator throughout the proceedings below, is the proper party-respondent in this Court. Petitioner is in error naming the individual members of the Supreme Court of Illinois and the individual members of the Commission as party-respondents.

These proceedings were initiated on the petition of the Commission's Administrator that a rule to show cause issue to Petitioner why he should not be held in contempt for failing to pay the 1989 annual attorney registration fee. (*In re Greening*, M.R. 5916 in the Supreme Court of Illinois, *Report Pursuant to Supreme Court Rule 756*, filed on July 25, 1989). The proceedings concluded when the Supreme Court of Illinois entered an order sentencing Respondent on a conviction of indirect criminal contempt for engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys authorized to practice law in the State for failing to pay the 1989 attorney registration fee as required by Illinois Supreme Court Rule. (*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on June 25, 1991).

Since 1973, all attorneys in the State of Illinois pursuant to Illinois Supreme Court Rule 756(a), have been required to pay an annual registration fee to the Commission to fund the State's attorney registration and disciplinary system. (107 Ill.2d R. 756(a) (1985)). The collection of these fees and the registration of attorneys is under the administrative supervision of the Commission pursuant to Illinois Supreme Court Rule 751(a). (107 Ill.2d R. 751(a) (1985)). The Administrator is charged with representing the Commission in all proceedings regarding the registration of

attorneys pursuant to Illinois Supreme Court Rule 752(e). (107 Ill.2d. R. 752(e) (1985)).

Registration proceedings include the prosecution of attorneys for contempt pursuant to Illinois Supreme Court Rule 756(d) for engaging in the unauthorized practice of law while removed from the Master Roll of Attorneys for failing to pay the annual registration fee. (107 Ill.2d R. 756(d) (1985)). Therefore, the Commission by its Administrator, was the initial complainant in this matter.

Petitioner has presented no argument in support of the inclusion of the individual members of the Supreme Court of Illinois, the adjudicative body in this situation, and the individual members of the Commission as party-respondents to this proceeding. Supreme Court Rule 12.4 provides that all parties to the proceeding in the court whose judgment is sought to be reviewed shall be parties in this Court. The Commission can and should be considered as the proper party-respondent to this proceeding.

This brief in response is filed on behalf of the Commission and its individual members as set forth in the petition for certiorari. The Commission received notice of the petition on September 23, 1991. Counsel for the individual members of the Supreme Court of Illinois has informed the Commission that the Court will file a separate brief in opposition concerning this issue and in support of the substantive arguments presented in the body of this brief.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondent individual members of the Attorney Registration and Disciplinary Commission and the Commission, respectfully pray the this Court enter an order denying Petitioner's *Petition for Writ of Certiorari to the Supreme Court of Illinois* filed in this cause.

STATEMENT OF THE CASE

On March 1, 1989 Petitioner's name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois. Petitioner's name was removed because he failed to pay the 1989 attorney registration

fee to the Commission as required by Illinois Supreme Court Rule. Petitioner subsequently notified the Commission that his failure to pay the fee was intentional. The Administrator of the Commission then filed a petition in the Supreme Court of Illinois requesting that a rule to show cause issue to Petitioner why he should not be suspended from the practice of law for intentionally refusing to pay the registration fee.

The Commission subsequently received information which indicated that Petitioner was engaging in the unauthorized practice of law while his name was removed from the Master Roll of Attorneys. The Administrator of the Commission then filed a petition in the Supreme Court of Illinois requesting that a second rule to show cause issue to Petitioner why he should not be found in indirect criminal contempt of the Court for engaging in the unauthorized practice of law. Petitioner responded to the rule with State and Federal Constitutional challenges to the authority of the Court to collect an annual attorney registration fee.

The Supreme Court of Illinois found Petitioner's constitutional challenges to be without merit. The Court also found that Petitioner had engaged in the unauthorized practice of law. The Court then convicted and sentenced Petitioner on a charge of indirect criminal contempt. Petitioner has now filed his petition for writ of certiorari with this Court.

The facts concerning Petitioner's conduct are largely uncontested. The facts are almost entirely set forth in a stipulation entered into by Petitioner and the Commission. This stipulation was entered into evidence during an evidentiary hearing held before Illinois Circuit Court Judge J. David Bone on August 6, 1990. (*Stipulation as to Facts and Admissibility of Documents (Stip.)*, Bone trans., 8/6/90, p. 7). This stipulation is reprinted as Appendix A to this brief, minus the referenced exhibits.

Petitioner's Removal from the Master Roll of Attorneys

Petitioner was admitted to the practice of law in the State of Illinois on May 16, 1949. (*Stip.*, par. 3).

On or about December 22, 1988, Petitioner received a notice from the Commission informing him that he was required to register and pay the 1989 annual attorney registration fee in the amount of $140 to the Commission on or before February 1, 1989.[1] (*Stip.*, par. 6). Petitioner neither registered nor paid the 1989 annual attorney registration fee as required. (*Stip.*, par. 7).

On or about February 20, 1989, Petitioner received a letter from the Commission notifying him that his registration and the 1989 annual attorney registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys. (*Stip.*, par. 8). Petitioner failed to register or pay the fee, so on March 1, 1989 his name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois pursuant to Illinois Supreme Court Rule 756(d).[2] (107 Ill.2d R. 756(d) (1985)). (*Stip.*, par. 9).

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[1] Attorneys in Illinois are required by Illinois Supreme Court Rule 756(c) to notify the Administrator of the Commission of any change of address. (107 Ill.2d R. 756(c) (1985)). The registration form forwarded to attorneys provides them with an opportunity to correct their address, as well as certify that they are paying the appropriate amount for their registration fee as required by Illinois Supreme Court Rule 756(a). (107 Ill.2d R. 756(a) (1985)).

[2] Illinois Supreme Court Rule 756(d) provides that on the first of February of each year, the Administrator shall remove from the Master Roll of Attorneys the name of any person who has not registered for that year. (107 Ill.2d R. 756(d) (1985)). In 1989, the registration forms that the Administrator is required to mail to each attorney on the Master Roll were late being processed.

(Footnote continued on following page)

On or about March 22, 1989, Respondent received a letter from the Commission notifying him that his name had been removed from the Master Roll of Attorneys. (*Stip.*, par. 10). On or about May 2, 1989, Petitioner forwarded a letter to the Commission stating, "A recent Fourth District Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois."[3] (*Stip.*, par. 11).

On or about May 11, 1989, the Commission wrote to the Chief Judge of the Circuit Court situated where Petitioner's law office had previously been located and informed him that Petitioner's name had been removed from the Master Roll of Attorneys on March 1, 1989. (*Stip.*, par. 12).

On or about June 6, 1989, Petitioner received a letter from the Commission notifying him that the was not excused from registering or paying the 1989 annual attorney registration fee and accrued penalties.[4] Enclosed with

[2] *continued*
Therefore, attorneys were granted a 30-day extension before their names were removed from the Master Roll for failure to register and pay the annual registration fee. This explains why Petitioner's name was not removed from the Master Roll until March 1, 1989.

[3] Petitioner was referring to the opinion of the Appellate Court of Illinois, Fourth District, in *Powell, et al. v. Western Illinois Electric Cooperative, et al.*, 180 Ill. App.3d 581, 536 N.E.2d 231 (Ill. App. 4 Dist.) (*petition for leave to appeal denied*, 127 Ill.2d 640, 545 N.E.2d 129 (1989)) (*cert. denied*, 110 S. Ct. 1132 (1990)). The Appellate Court's decision in *Powell* had nothing to do with the registration and licensing of attorneys in the State of Illinois. In *Powell*, the Appellate Court simply found that the attorney-client privilege applies between an Illinois corporate client and an attorney who represents the corporation, but is not licensed to practice law in the State.

[4] In the letter dated June 6, 1989, Jerome Larkin, Deputy Administrator of the Commission, informed Petitioner:

> I have reviewed the opinion of the Illinois Appellate Court in *Powell, et al. v. Western Illinois Electric Cooperative, et al.*,

(Footnote continued on following page)

the letter was a 1989 registration application. (*Stip.*, par. 13). On or about June 12, 1989, the Commission received a letter from Petitioner. The 1989 registration application was completed and attached to the letter. Petitioner did not forward the 1989 annual attorney registration fee.[5] (*Stip.*, par. 14).

Suspension Proceedings in the Supreme Court of Illinois

On July 31, 1989 the Administrator of the Commission filed with the Supreme Court of Illinois an amended report pursuant to Illinois Supreme Court Rule 756 (107 Ill. 2d R. 756 (1985)), concerning Petitioner's failure to pay

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[4] *continued*

No. 4-88-0355 (4th District 1989). The opinion does not support your position that you are not obligated to pay the registration fee required by Supreme Court Rule 756(a).

The appellate court was not faced with the issue of the obligation of an Illinois attorney to pay the registration fee under Supreme Court Rule 756 and did not purport to interfere with the inherent and exclusive jurisdiction of the Supreme Court to regulate the legal profession. See *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899).

The appellate court's decision related to a narrow issue: whether the communication between an Iowa attorney and a client located in Illinois would be accorded the protection of the attorney-client privilege in litigation in an Illinois court. The court was not presented and did not find it necessary to consider the charge that the Iowa attorney was engaged in the unauthorized practice of law in Illinois.

(*Stip.*, par. 13, Exhibit 8). Apparently, Petitioner has abandoned his argument that the *Powell* decision is controlling in this case. Petitioner has not included this argument in his petition for certiorari.

[5] In his letter dated June 12, 1989, Petitioner questions the authority of the Supreme Court of Illinois to "exercise governmental power to collect money to put in a private fund for any purpose." Petitioner maintains that he could only be removed from the Master Roll of Attorneys for "malconduct". Therefore, he did not intend to pay the 1989 annual registration fee as required by Supreme Court Rule 756. (*Stip.*, par. 14, Exhibit 9).

the 1989 annual attorney registration fee and accrued penalties. No specific conduct of Petitioner was reported to the Court other than Petitioner's failure to pay the 1989 annual attorney registration fee and penalties with his registration. The amended report requested that the Court issue a rule to show cause why Petitioner should not be suspended from the practice of law for his willful failure to comply with Rule 756. (*Stip.*, par. 15).

On August 7, 1989 the Supreme Court of Illinois ruled Petitioner to show cause, in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of the Court for failing to comply with the requirements of Supreme Court Rule 756. (*Stip.*, par. 16). On August 18, 1989 a copy of the rule to show cause was personally served on Petitioner. (*Stip.*, par. 17).

On September 11, 1989 Petitioner filed an answer to the rule to show cause. On September 22, 1989 Petitioner filed an amendment to his answer. In his answers, Petitioner formally raises his constitutional challenges concerning due process and the Supreme Court of Illinois' authority to remove his name from the Master Roll of Attorneys for non-payment of the 1989 annual attorney registration fee. (*Stip.*, par. 18).

Petitioner also attached to his answer filed on September 11, 1989, a cashier's check in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois". Petitioner alleged that the proceeds of this check represented payment of the past-due 1989 annual attorney registration fee and accrued penalties. (*Stip.*, par. 18).

On September 15, 1989 the Administrator of the Commission filed his response to Petitioner's answer. The Administrator requested that the Supreme Court enter an order enforcing its rule to show cause and suspend Peti-

tioner from the practice of law until such time as he complied with the provisions of Illinois Supreme Court Rule 756. (*Stip.*, par. 19).

On September 27, 1989 the Supreme Court of Illinois entered an order directing the Clerk of the Court to return to Petitioner his cashier's check for $230. The Court continued its rule to show cause to and including October 4, 1989, to give Petitioner the opportunity to make payment of the 1989 annual attorney registration fee and accrued penalties to the Commission. (*Stip.*, par. 20).

On October 3, 1989 Petitioner unilaterally deposited the cashier's check which was returned to him into an escrow account with a corporation which was not affiliated with the Commission. (*Stip.*, par. 21). On October 4, 1989 Petitioner filed a copy of the escrow agreement concerning the cashier's check with the Supreme Court of Illinois. (*Stip.*, par. 22).

Facts Concerning the Unauthorized Practice of Law

On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88-P-97. (*Stip.*, par. 4). The estate was assigned to Circuit Judge Simon L. Friedman.[6]

On February 19, 1988 an order was entered by Judge Friedman appointing Ms. Halbert the independent administrator of her late husband's estate. (*Stip.*, par. 5). Peti-

[6] Petitioner was a high school classmate of Judge Friedman's and the two have known each other for 55 years. (Bone trans., 8/6/90, p. 13).

tioner remained the attorney of record for the administrator from the date the estate was opened, until October 27, 1989, the date the estate was closed. (Bone trans., 8/6/90, p. 7, Exhibit 2; *Report of Hearings Conducted Pursuant to Order Entered May 30, 1989* (Report), M.R. 5916 in the Supreme Court of Illinois, filed by Judge Bone on October 4, 1990, par. 7; Pet.'s Appendix F, p. F3).

On March 1, 1989 Petitioner's name was removed from the Master Roll of Attorneys authorized to practice law in the State of Illinois as set forth above. (*Stip.*, par. 9). Petitioner received notice that his name had been removed from the Master Roll on or about March 22, 1989. (*Stip.*, par. 10).

On or about August 9, 1989, Petitioner inquired of Judge C. Joseph Cavanagh, the Chief Judge of the Seventh Judicial Circuit, the Circuit in which Case No. 88-P-97 was pending, whether Petitioner would be permitted to practice law in Judge Cavanagh's courtroom. Judge Cavanagh replied that Petitioner would not be allowed to appear in his courtroom because Petitioner's name had been removed from the Master Roll of Attorneys. (Bone trans., 8/6/90, pp. 9-11; *Report*, par. 7; Pet.'s Appendix F, p. F3).

Soon thereafter, Ms. Halbert requested that the proceedings in Case No. 88-P-97 be closed. Petitioner informed Ms. Halbert that he might not be able to close the estate because of the problems with the 1989 annual attorney registration fee as set forth above, but he would find out. (Bone trans., 9/7/90, pp. 24-25; *Report*, par. 7; Pet.'s Appendix F, p. F3). Petitioner then advised Ms. Halbert on the procedure for closing the estate, completed the final report for Ms. Halbert's approval and signature, and received Ms. Halbert's check in the amount of $39 for closing costs. (Bone trans., 9/7/90, pp. 32-35; *Report*, par. 7; Pet.'s Appendix F, p. F3).

On or about October 19, 1989, Petitioner appeared in Judge Friedman's chambers with a file related to Petitioner's dispute with the Commission. Judge Friedman refused to review the file because he was already aware of the facts of the situation. Judge Friedman had been following the dispute through articles which had appeared in a daily legal newspaper, the *Chicago Daily Law Bulletin*, printed in Chicago, Illinois. (Bone trans., 8/6/90, pp. 17-18; *Report*, par. 7; Pet.'s Appendix F, p. F4).

On October 20, 1989 Petitioner appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and delivered for filing in Case No. 88-P-97, the final report signed by Ms. Halbert, tendered Ms. Halbert's check in the amount of $39 for closing costs, and additionally filed an estate closing letter from the Internal Revenue Service and a certificate of discharge and determination of tax issued by the (Illinois) Attorney General. (*Stip.*, par. 23; *Report*, par. 7; Pet.'s Appendix F, p. F4).

On the same day (October 20), Petitioner reappeared before Judge Friedman. Judge Friedman's docket entry in Case No. 88-P-97 states in relation to Petitioner's appearance, "On October 20, 1989, Alfred H. Greening (Petitioner) appeared to obtain an approval of final accounting in this estate. The Court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out."[7] (Bone trans., 8/6/90, p. 17; *Stip.*, par. 24; *Report*, par. 7; Pet.'s Appendix F, p. F4).

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[7] At the evidentiary hearing before Judge Bone on August 6, 1990, Judge Friedman testified that when Petitioner first appeared before him on October 20, 1989, Petitioner related that "he had paid and registered" with the Commission. Judge Friedman then told Petitioner that he had paid the attorney registration fee "to the wrong people," that he had paid the Supreme Court of Illinois, when he should have paid it to the Commission. (Bone trans., 8/6/90, pp. 19-20; *Report*, par. 7).

Petitioner then reported to Ms. Halbert that he was unable to close the estate. On Petitioner's recommendation and with Ms. Halbert's approval, Petitioner retained the services of another attorney who entered her appearance in the estate, obtained the Court's approval of the final report and received a discharge of the administrator. (Bone trans., 9/7/90, pp. 24-26; *Report*, par. 7; Pet.'s Appendix F, pp. F4-F5).

Indirect Criminal Contempt Proceedings in the Supreme Court of Illinois

On February 7, 1990 the Administrator of the Commission filed his *Supplemental Report* in *In re Greening*, M.R. 5916 in the Supreme Court of Illinois. The report alleged that Petitioner had engaged in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys on March 1, 1989. The Administrator requested that Petitioner be ruled to show cause why he should not be held in indirect criminal contempt pursuant to Illinois Supreme Court Rule 756(d). (107 Ill.2d R.756(d) (1985)). (*Stip.*, par. 31).

On March 26, 1990 the Supreme Court of Illinois entered an order ruling Petitioner to show cause, in writing, on or before April 30, 1990, why he should not be held in indirect criminal contempt of the Court for engaging in the unauthorized practice of law. (*Stip.*, par. 33). On April 11, 1990 a copy of the Court's rule to show cause was personally served on Petitioner. (*Stip.*, par. 34).

On April 30, 1990 Respondent filed his answer to the Supreme Court of Illinois' rule to show cause. Petitioner again raised objections of denial of due process under the United States Constitution and a number of state constitutional and legal issues. (*Stip.*, par. 35).

On May 30, 1990 the Supreme Court of Illinois entered an order continuing its rule to show cause issued to Peti-

tioner. The Court directed Petitioner and a representative of the Commission to appear before Judge Bone for the purpose of an evidentiary hearing. Judge Bone was directed to make findings of fact concerning the issues formed by the Commission's supplemental report and Petitioner's answers thereto. (*Stip.*, par. 36).

The facts concerning the hearings held before Judge Bone and the Supreme Court of Illinois are accurately set forth in the petition for writ of certiorari. (*Petition for Writ of Certiorari* (Petition), pp. 6-12). The only addition the Commission would provide is that on July 5, 1990, prior to any evidence being taken by Judge Bone, the Administrator filed on behalf of the Commission, a specification of factual allegations which the Administrator intended to prove beyond a reasonable doubt during the evidentiary hearings. (*Administrator's Specification of Factual Allegations*, M.R. 5916 in the Supreme Court of Illinois, filed on July 5, 1990).

The Administrator agreed to limit his evidence of Petitioner's conduct to the matters set forth in the specification. (Bone trans., 6/21/90, pp. 30-31). A true and correct copy of the specification is reprinted as Appendix B to this brief.

Judge Bone filed his report with the Supreme Court of Illinois after the conclusion of the hearings before him. (*Report*, Pet.'s Appendix F). The Court reviewed the report and found that the Administrator on behalf of the Commission had proven beyond a reasonable doubt that Petitioner had engaged in the unauthorized practice of law after his name had been removed from the Master Roll of Attorneys on March 1, 1989. The Court then enforced its rule to show cause issued on March 26, 1989 as set forth above, and held Petitioner in indirect criminal contempt of the Court for engaging in the unauthorized prac-

tice of law. (*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on May 29, 1991; Pet.'s Appendix A, p. A1).

In its order sentencing Petitioner, the Supreme Court of Illinois reaffirmed its finding that Petitioner had engaged in the unauthorized practice of law. Further, the Court found that Petitioner had performed the following acts in Case No. 88-P-97 after March 1, 1989, which constituted the practice of law:

> 1. Advised the estate administrator of the proper procedures for closing an estate under the Probate Act of 1975 (Ill. Rev. Stat. 1989, Ch. 110½, par. 1-1 *et seq.*);
>
> 2. Prepared a final accounting presumably as required by Section 24-1 of the Probate Act of 1975 (Ill. Rev. Stat. 1989, Ch. 110½, par. 24-1); and
>
> 3. After obtaining the signature of the estate administrator on the final accounting, presented it to Judge Friedman.

(*Order*, M.R. 5916 in the Supreme Court of Illinois, filed on June 25, 1991; Pet.'s Appendix B, pp. B1-B2).

SUMMARY OF ARGUMENT

Petitioner's argument that he was denied due process of law when his name was removed from the Master Roll of Attorneys is without merit. The decisions of this Court do not require that a hearing be held when a license granted by the State as a right is suspended or rescinded because of the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to retaining the license. A hearing is only required when a license is suspended or revoked for misconduct.

The Supreme Court of Illinois can lawfully collect an annual registration fee from attorneys admitted to the practice of law in the State. Petitioner did not fulfill his

obligation to pay the fee. The fee was an administrative requirement imposed as a prerequisite to retaining his license. Therefore, a hearing was not required when Petitioner's name was removed from the Master Roll.

Petitioner's arguments that he was denied due process of law during his prosecution for indirect criminal contempt of court are also without merit. Due process requires that a defendant in an indirect criminal contempt proceeding be provided with notice of the charge against him, an opportunity to defend, and a fair hearing. Petitioner was afforded each of the elements. Therefore, his right to due process was not violated.

ARGUMENT

I.

THE SUPREME COURT OF ILLINOIS CAN SUMMARILY REMOVE THE NAME OF AN INDIVIDUAL FROM THE MASTER ROLL OF ATTORNEYS AUTHORIZED TO PRACTICE LAW IN THE STATE FOR FAILING TO COMPLY WITH AN ADMINISTRATIVE REQUIREMENT, THE PAYMENT OF AN ANNUAL REGISTRATION FEE, ESTABLISHED IN RELATION TO THE COURT'S INHERENT AUTHORITY TO REGULATE THE PRACTICE OF LAW.

Petitioner's argument that he was denied due process of law when his name was removed from the Master Roll of Attorneys is without merit. The decisions of this Court do not require that a hearing be held when a license granted by the State as a right is suspended or rescinded because of the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to retaining the license. A hearing is only required when a license is suspended or revoked for misconduct.

The Supreme Court of Illinois can lawfully collect an annual registration fee from attorneys admitted to the

practice of law in the State. Petitioner did not fulfill his obligation to pay the fee. The fee was an administrative requirement imposed as a prerequisite to retaining his license. Therefore, a hearing was not required when Petitioner's name was removed from the Master Roll.

A. The Supreme Court of Illinois can lawfully collect an annual attorney registration fee from an individual admitted to practice law in the State based upon the Court's inherent authority to regulate the practice of law.

The Supreme Court of Illinois has the inherent authority to regulate the practice of law within the boundaries of the State. Inherent in this authority, though it is not directly conferred in the State's Constitution, is the power to prescribe the qualifications which will entitle an individual to be admitted and to remain a member of the bar. (*In re Day*, 181 Ill. 72, 54 N.E. 646 (1899); *People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931)). In regard to this authority, this Court has held,

> We recognize that the states have a compelling interest in the practice of professions within their boundaries, and as part of their power to protect the public . . . they have broad power to establish standards for licensing practitioners and regulating the practice of professions * * * The interest of the states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts." (Citations omitted.)

(*Goldfarb v. Virginia State Bar*, 421 U.S. 773, 793 (1975)).

In *Lathrop v. Donahue*, 367 U.S. 820 (1960), this Court held that a State could constitutionally require that all attorneys admitted to practice be members of the State's private integrated bar association and be required to pay its annual dues. The Court found that each state has a legitimate interest in raising the quality of the services

of the attorneys who practice within their boundaries. (*Lathrop*, at 843).

In *Lathrop*, one of the purposes of the bar association at issue was to enforce disciplinary obligations and prosecute the misconduct of attorneys. The Court held that the costs of improving the profession in this fashion should be shared or borne by the subjects and beneficiaries of the regulatory program, the attorneys, even though the association also engaged in other legislative and political activity.[8] (*Lathrop*, at 843).

Illinois does not have an integrated bar association. The registration of attorneys and the prosecution of attorney misconduct has been delegated to the Commission by the Supreme Court of Illinois through its rules. (107 Ill.2d R. 750 *et seq.*, (1985)). The fund created by the Commission's collection of the annual attorney registration fee is entirely earmarked for the registration and discipline of attorneys. Clearly, pursuant to this Court's decision in *Lathrop*, the Supreme Court of Illinois has the authority to require that each attorney pay an annual registration fee and that fee be paid to the Commission.

B. A hearing must be available to a licensee if a license granted by the State as a right is revoked or suspended for cause.

The Court has held that the practice of law is a fundamental right. (*Supreme Court of New Hampshire v. Piper*, 470 U.S. 272 (1985)). A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or

[8] The Court recently reaffirmed in a unanimous opinion the rule in *Lathrop* that a state can require the members of its bar to pay an annual registration fee or bar dues for the purpose of supporting an attorney registration and disciplinary system. (*Keller v. State Bar of California*, 110 S. Ct. 2281 (1990)).

Equal Protection Clauses of the Fourteenth Amendment. (*Schware v. Board of Bar Examiners*, 353 U.S. 232 (1956)). Petitioner relies on these principles and this Court's decisions in *Bell v. Burson*, 402 U.S. 535 (1971) and *Berry v. Barchi*, 443 U.S. 55 (1979) to support his argument that he was denied his right to due process when his name was removed from the Master Roll of Attorneys without an opportunity for a hearing. Petitioner is correct in maintaining that a hearing is required when a license held as a right is suspended or revoked for misconduct, as was the case in both *Bell* and *Berry*.

In *Bell*, the Georgia Motor Vehicle Safety Act was reviewed. The Act provided that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident was to be suspended, unless the motorist posted security to cover the amount of damages claimed by the aggrieved parties in reports of the accident. An administrative hearing was provided prior to the suspension, but by statute, the hearing excluded all consideration of the motorist's fault or liability for the accident. (*Bell*, at 537-538).

The Court held that a hearing on liability would be required, and held that "procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed (the amount of the security posted) against the licensee." (*Bell*, at 540).

In *Berry*, the Court reviewed the suspension by the New York Racing and Wagering Board of a licensed horse trainer who had violated standards of conduct promulgated by the State. The standards provided that a trainer was forbidden to permit a horse in his custody to start a race if he knew or should have known or had cause to believe that a horse trained by him had been drugged. A horse trained by the licensee was found to have been

drugged. The trainer's license was then summarily suspended pursuant to the standards of conduct and a statutory presumption that the person responsible for the horse (the trainer) had administered the drugs. The licensee was afforded a post-suspension hearing on culpability, but no requirements for timeliness were present and the license was to remain suspended, pending the disposition of the hearing. (*Berry*, at 57-61).

The Court rejected the licensee's argument that he was denied due process guarantees when he was summarily suspended. The Court found, though, that the licensee was entitled to a prompt post-suspension hearing and resolution on the issue of the trainer's culpability. (*Berry*, at 63-64). (*See also, Parratt v. Taylor*, 451 U.S. 527 (1981)).

The decisions above both concern a licensee whose license had been revoked for cause or misconduct. It is clear pursuant to these decisions that a pre-suspension hearing or a prompt post-suspension hearing would be required if an attorney's license was suspended or he was disbarred for attorney misconduct.[9] Petitioner's removal from the Master Roll of Attorneys was not related to attorney misconduct. Therefore, no hearing was required as set forth below.

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[9] An attorney charged with misconduct in Illinois is afforded a full hearing and review procedure pursuant to the requirements of Illinois Supreme Court Rule 753, prior to being suspended or disbarred for engaging in attorney misconduct. (107 Ill.2d R. 753 (1985)). An attorney may be suspended on an interim basis while charges of serious misconduct are pending against him, but the attorney is still afforded an opportunity to respond to the charges pursuant to Illinois Supreme Court Rule 774(a), prior to an order of suspension being entered. (107 Ill.2d R. 774(a) (1985)).

C. A hearing does not have to be available to a licensee if a license granted by the State as a right is revoked or suspended due to the failure of the licensee to comply with an administrative requirement imposed as a prerequisite to obtaining or retaining the license.

It is clear that an attorney has a property interest in his law license, "a legitimate claim of entitlement." (*Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). An attorney may retain that property interest if he complies with all administrative requirements reasonably established by the State. (*See, Reed v. Village of Shorewood*, 704 F.2d 943, 948-949 (7th Cir. 1983)).

In *Reed*, an Illinois liquor license holder argued that his right to due process was denied when the Village of Shorewood informed him that his license would not be renewed, not for cause, but simply because the village voted to issue three licenses instead of four. The Court held that if undemanding criteria for renewal are set, a licensee is entitled to the renewal of his license if he meets those criteria. (*Reed*, at 948-949).

An attorney may abandon his property interest in his license if he does not comply with reasonable criteria. A hearing is not required for license suspension or non-renewal, if these criteria are not met. (*See, Vaden v. Village of Maywood*, 809 F.2d 361, 366 (7th Cir.), *cert. denied*, 482 U.S. 908 (1987)).

In *Vaden*, the operator of a mobile food vending business was not issued a vending license, a recognizable property right, by the Village of Maywood, Illinois, because she had not obtained a certificate of registration from a State taxing authority. The issuance of a certificate was an administrative requirement for obtaining the village license. The Court held the woman's rights were not unconstitutionally denied and a hearing was not required concerning the village's failure to issue a license because

the certificate was a prerequisite required by the State before the woman could even lawfully open her business. Therefore, her failure to obtain the certificate operated as an abandonment of her property interest in the license. (*Vaden*, at 366).

A hearing is also not required if a licensee is afforded meaningful post-deprivation remedies. If the damage alleged by the licensee concerning the loss of his license may be adequately addressed in some lawful forum which will provide the requisite due process protection, a hearing is not required. (*See, Easter House v. Felder*, 879 F.2d 1458, 1475-1476 (7th Cir. 1989) (*cert. gr. and vac.*, 110 S. Ct. 1314) (*aff'd on remand*, 910 F.2d 1387 (1990)) (*cert. denied*, 111 S. Ct. 783 (1991)).

In *Easter House*, an adoption agency alleged it was denied due process of law based upon the State of Illinois' refusal to grant the agency an extension of its license. The Court found that because the agency could seek adequate state court remedies concerning the damages it alleged, no hearing was required prior to its license being revoked. (*Easter House, supra). (See also, Thornton v. Barnes*, 890 F.2d 1380 (7th Cir. 1989)).

The preceding decisions demonstrate that a hearing does not have to be available to a licensee if a license granted by the State as a right is revoked or suspended due to the failure of the licensee to comply with an administrative requirement imposed as prerequisite to obtaining or retaining the license. This rule is especially persuasive when the licensee is provided an adequate and meaningful opportunity to comply with the administrative requirement and have his license reinstated as a matter of course.

D. Petitioner failed to comply with an administrative request imposed as a prerequisite to retaining his license to practice law, the payment of the 1989 attorney registration fee, therefore, no hearing had to be available when his name was removed from the Master Roll of Attorneys.

The facts concerning Petitioner's removal from the Master Roll of Attorneys are clear. Petitioner intentionally failed to pay the 1989 attorney registration fee and was removed from the Master Roll because of his failure to pay. As argued above, there is no question that the Supreme Court of Illinois could require Petitioner to pay an annual fee to support the State's attorney registration and disciplinary system. It is clear that this fee and the required registration are administrative prerequisites which Petitioner had to satisfy in order to have his license reinstated.

Illinois Supreme Court Rule 756(e) provides that:

> An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of $10 per month for each month that such registration fee is delinquent.

(107 Ill.2d R. 756(e) (1985) (as amended, effective December 1, 1988)). The rule on its face is probative of the fact that the payment of the fee is a mere administrative requirement. This rule provided Petitioner with a painless remedy to reinstate his license. The facts indicate that Petitioner simply abandoned his interest in his license by not paying the fee.[10]

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[10] Petitioner filed an action in Federal District Court seeking to enjoin his contempt prosecution and raising many of the same arguments he is pursuing in his petition for certiorari. Judge Mills,

(Footnote continued on following page)

Respondent was not entitled to a hearing before his removal from the Master Roll of Attorneys or a post-removal hearing concerning his failure to pay.[11] As argued above, no hearing is required when a license is suspended merely for failure to comply with an administrative requirement. (*See*, Section I(C), *supra).*

Respondent was also not entitled to a hearing concerning his arguments that the Supreme Court of Illinois cannot, pursuant to the Constitution of the State of Illinois and other state laws, collect a mandatory registration fee from attorneys to support an attorney registration and disciplinary system. (*See*, *Petition*, Sec. I(b), pp. 16-18).

Several state court remedies are available to Petitioner to contest the validity of his claims.[12] Petitioner will be free to seek the due process protection he alleges he

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[10] *continued*
speaking in relation to Petitioner's opportunity to reinstate his license, found: "The fact that this avenue of relief is open to (Petitioner) takes this case out of the category of those arbitrary deprivations lacking due process of law—the redemption provision of S. Ct. R. 756(e) could have been Greening's salvation, but for his own obstinence." (*Greening v. Moran, et al.*, 739 F. Supp. 1244, 1252-1253 (C.D. Ill. 1990)).

[11] Petitioner contends that he was foreclosed from addressing the issue of payment before the Supreme Court of Illinois. Petitioner argues that he did make payment when he tendered his check to the Court. Petitioner alleges that the Court ignored his payment and invoked criminal contempt proceedings to punish him. (*See*, *Petition*, p. 18). Petitioner's arguments are without merit. Petitioner has admitted that the Court returned his check to him with the express direction to make his payment to the Commission as required by Illinois Supreme Court Rule 756(a). (*Stip.*, par. 20) In response to this directive, Petitioner unilaterally deposited his check into an escrow account. Petitioner did not pay the Commission as ordered by the Court. (*Stip.*, par. 21). Petitioner cannot in the face of this evidence argue that he made proper payment.

[12] While not a complete list of the state remedies available to Petitioner to address his claims, Petitioner could invoke the authority of the Supreme Court of Illinois and file an original action in mandamus or prohibition pursuant to Illinois Supreme Court Rule 381. (107 Ill.2d R. 381 (1985)).

has not been afforded. Petitioner will be able to litigate his claims no matter how dubious they are based upon the current status of the law.

Petitioner's claims are dubious because the decisions of this Court in *Lathrop* and *Keller* are controlling. There is no question that the Supreme Court of Illinois in exercising its inherent authority to regulate the practice of law can require and collect an annual attorney registration fee to support its attorney registration and disciplinary system. (*See*, Section I(A), *supra)*. Therefore, Petitioner's claims will be unsuccessful no matter which forum he chooses.[13]

Petitioner's right to procedural due process pursuant to the Fourteenth Amendment has not been violated because a hearing was not afforded him when his name was removed from the Master Roll of Attorneys. The fee Petitioner was required to pay was an administrative requirement. Therefore, no hearing was required.

II.

PETITIONER WAS AFFORDED DUE PROCESS GUARANTEES DURING HIS PROSECUTION FOR INDIRECT CRIMINAL CONTEMPT OF THE SUPREME COURT OF ILLINOIS FOR ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW AFTER HIS NAME WAS REMOVED FROM THE MASTER ROLL OF ATTORNEYS AUTHORIZED TO PRACTICE LAW IN THE STATE.

Petitioner's arguments that he was denied due process of law during his prosecution for indirect criminal con-

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[13] As noted in footnote 10, *supra*, Petitioner did file an action pursuant to 42 U.S.C. Sec. 1983 in the Federal District Court praying for damages and injunctive relief concerning his contempt prosecution. Petitioner raised many of the same State and Federal Constitutional arguments presented here. Petitioner's claims were all denied and his case was dismissed. (*Greening v. Moran, et al., supra*). Petitioner has appealed the District Court's decision to the Seventh Circuit Court of Appeals, No. 90-3784.

tempt of court are without merit. Due process requires that a defendant in an indirect criminal contempt proceeding be provided with notice of the charge against him, an opportunity to defend, and a fair hearing. Petitioner was afforded each of the elements. Therefore, his right to due process was not violated.[14]

A. Definition of criminal contempt.

The Supreme Court of Illinois has defined criminal contempt of court as "conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (*People v. Javaras*, 51 Ill.2d 296, 299, 281 N.E.2d 670, 671 (1972)).

Direct criminal contempt is contemptuous conduct occurring "in the very presence of the judge, making all of the elements of the offense matters within his own personal knowledge." (*People v. Harrison*, 403 Ill. 320, 323-324, 86 N.E.2d 208, 210 (1949)). Direct contempt is restricted to acts and facts seen and known by the court. No matter based upon opinion, conclusion, presumption or inference should be considered. (*People v. Loughran*, 2 Ill.2d 258, 263, 118 N.E.2d 310, 313 (1954)).

Indirect criminal contempt is contemptuous conduct which in whole or in an essential part occurred out of the presence of the court. Therefore, it is dependent for its proof upon evidence of some kind. (*People v. Sherwin*, 353 Ill. 525, 528, 187 N.E. 441, 442 (1933)). "Where the judge does not have full personal knowledge of every element of the contempt and its demonstration depends on the

[14] It is important to note at the outset that a defendant in a criminal contempt proceeding is not afforded all of the safeguards surrounding one accused of a crime. (*People v. Barasch*, 21 Ill.2d 407, 410, 173 N.E.2d 417, 419 (1961)).

proof of facts, of which the court would have no judicial notice, the contempt is held to be indirect." (*People v. L.A.S.*, 111 Ill.2d 539, 543, 490 N.E.2d 1271, 1273 (1986) (*citing, People v. Harrison, supra*).

Petitioner was prosecuted on a charge of indirect criminal contempt. The procedural due process to be provided in such a proceeding is set forth below.

B. Process which is due in indirect criminal contempt proceeding.

Direct criminal contempt may be found and punished summarily because all of the elements are before the court and come within its immediate knowledge. Therefore, the usual safeguards of procedural due process are not required. (*People v. Javaras*, 51 Ill.2d at 299, 281 N.E.2d at 672).

Indirect criminal contempt requires proof of matters outside the immediate knowledge of the court. Therefore, the contemnor is entitled to procedural due process safeguards. These safeguards include notice, opportunity to answer, and a hearing.[15] (*People v. L.A.S.*, 111 Ill.2d at 544, 490 N.E.2d at 1273).

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[15] The required procedural due process for criminal contempt proceedings in the Federal District Courts has been codified. In direct criminal contempt proceedings, Fed. R. Crim. P. 42(a) provides that a contemnor may be punished summarily if the judge saw or heard the conduct and it was committed in the actual presence of the court. In indirect criminal proceedings Fed. R. Crim. P. 42(b) provides:

> A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the U.S. attorney appointed by the court for that purpose, by

(Footnote continued on following page)

C. Petitioner was afforded due process guarantees during his prosecution for indirect criminal contempt of the Supreme Court of Illinois.

Petitioner has argued that his right to due process of the law pursuant to the Fourteenth Amendment was violated because he was not given an adequate opportunity to defend himself. Petitioner argues that procedural due process was denied because no hearing was provided and Judge Bone did not rule on his constitutional arguments, the Supreme Court of Illinois did not allow him to brief his constitutional arguments and he was afforded no right to an appeal. (*See, Petition*, pp. 19-21, 26-27).

Petitioner also argues that he was denied due process because he did not receive a fair hearing. Petitioner argues that his hearing was unfair because Judge Bone did not rule on the issues of intent and whether the evidence presented by the Administrator was sufficient, Petitioner was denied the right to confront his accusers and Petitioner was convicted by a biased decision maker. (*See, Petition*, pp. 21-25, 27-29).

Petitioner does not argue that he was denied adequate notice of the charges against him. Petitioner's other arguments are without merit as discussed below. Petitioner was afforded all required procedural due process guarantees.

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[15] *continued*

an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

(Amended March 9, 1987, eff. August 1, 1987). The procedure followed in Petitioner's prosecution mirrored the requirements set forth in this rule.

1. Notice of charge.

Petitioner does not dispute that he was given adequate notice of the charges pending against him. The record reveals that from the initiation of these proceedings, Petitioner has been given adequate notice.

The Commission's initial petition seeking contempt and the Supreme Court of Illinois' rule to show cause both notified Petitioner that he was being charged with indirect criminal contempt of court. (*Stip.*, pars. 31, 33). Prior to hearing, the Commission provided Petitioner with a detailed specification of the factual allegations pending against him. (Appendix B). The Administrator agreed on behalf of the Commission to limit his evidence to that outlined in the specification. (Bone trans., 6/21/90, pp. 30-31). Finally, the Administrator notified Petitioner that the Commission was not going to request a sanction of incarceration for more than six months and a fine not exceeding $500 if Petitioner was convicted.[16] (Bone trans., 6/21/90, p. 21).

2. Opportunity to defend.

Petitioner argues that he was denied due process because Judge Bone did not rule on his constitutional arguments. In addition, Petitioner argues that the Supreme Court of Illinois did not provide him an opportunity to brief these issues. Petitioner's arguments are without merit. Petitioner was afforded an opportunity and did present his State and Federal Constitutional claims to the Supreme Court of Illinois. The Court expressly ruled on these claims. No hearing was required.

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[16] The significance of this notification was that Petitioner was not entitled to a trial by jury if the Commission sought a sanction limited to six months incarceration and a $500 fine. (*County of McLean v. Kickapoo Creek, Inc.*, 51 Ill.2d 353, 838 N.E.2d 720 (1972)). (*See also, Bloom v. Illinois*, 391 U.S. 194 (1967)).

The Supreme Court of Illinois in its rule to show cause directed to Petitioner, ordered him to set forth, in writing, why he should not be held in indirect criminal contempt of the Court. (*Stip.*, par. 16). In response, Petitioner filed both an original and amended answer wherein he set forth all of his State and Federal Constitutional claims, as well as state law arguments. (*Stip.*, par. 18). The Court in its order sentencing Petitioner considered the arguments made and found them to be without merit. (Pet.'s Appendix B, p. B2). The Court did not abuse its discretion in not affording Petitioner an opportunity to orally argue or further brief these issues. Petitioner's position was adequately set forth in his answers. Therefore, no oral argument or further briefing was required.[17] (*See, People v. Colorado City Lot Owners and Taxpayers Association*, 119 Ill. App.3d 691, 700, 456 N.E.2d 943, 950 (Ill. App. 1 Dist. 1983) (*reversed on other grounds*, 106 Ill.2d 1, 476 N.E.2d 409 (1985)).

Petitioner's argument that he was denied due process because he was not afforded an appeal is also without merit. The Supreme Court of Illinois has the inherent authority to prosecute as contempt the unauthorized practice of law. This authority is judicial and is not susceptible to modification by the legislature. (*See, People's Stock Yards State Bank*, 344 Ill. at 470-473, 176 N.E. at 905-906). Therefore, the right to an appeal is not required.[18]

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[17] The Supreme Court of Illinois also did not abuse its authority by remanding the matter to Judge Bone for an evidentiary hearing limited to issues of fact. In the prosecution of contempt for the unauthorized practice of law, the Court has historically referred these matters to a trial court or other lawful forum for findings of fact. (*See, People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931), *People v. Schafer*, 404 Ill. 45, 87 N.E. 773 (1949), and *People v. Barasch*, 21 Ill.2d 407, 173 N.E.2d 417 (1961)).

[18] Regardless, Petitioner does have a right to appeal the Illinois Supreme Court's decision to this Court pursuant to 28 U.S.C. Sec-

(Footnote continued on following page)

3. Fair hearing.

Petitioner alleges that his right to due process was violated because he was denied a fair hearing on the issue of intent, he was not allowed to challenge the sufficiency of the evidence presented against him at hearing by way of a motion for directed finding, he was denied his right to confront his accusers and he was convicted by a biased tribunal. Each of these arguments is without merit as argued below.

Petitioner's position is correct in that intent is an element of indirect criminal contempt which must be proven.[19] (*People v. Roush*, 101 Ill.2d 355, 364, 462 N.E.2d 468, 472 (1984)). Intent does not have to be proven by direct evidence. "The intent may be inferred from proof of the surrounding circumstances and from the character of the defendant." (*People ex rel. Kunce v. Hogan*, 67 Ill.2d 55, 61, 364 N.E.2d 50, 52 (1977)).

The circumstances in this situation clearly show that Petitioner intentionally practiced law after he was notified that his name was removed from the Master Roll of Attorneys. Petitioner has not challenged the fact that he was practicing law when he attempted to close the estate.[20]

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[18] *continued*
tion 1257(a). This Court may review the facts and law concerning Petitioner's conviction through its process of review on writ of certiorari. (*See*, U.S.S.C.R. 10 *et seq.*).

[19] The standard of proof in a prosecution for indirect criminal contempt is beyond a reasonable doubt. *People v. Ziporyn*, 121 Ill. App.3d 1051, 1055, 460 N.E.2d 385, 388 (Ill. App. 1 Dist. (1984)) (*reversed on other grounds*, 106 Ill.2d 419, 478 N.E.2d 364 (1985)). Judge Bone and the Supreme Court of Illinois used a reasonable doubt standard during the course of these proceedings. (Pet.'s Appendix A, p. A1; Pet.'s Appendix F, p. F3).

[20] Concerning the definition of the practice of law:

> The courts are in accord on the proposition that where one appears in a court representing one of the parties to the litiga-

(Footnote continued on following page)

Therefore, Petitioner was in willful contempt of the authority of the Supreme Court of Illinois.

Petitioner's argument that he was denied due process because Judge Bone did not allow him to challenge the sufficiency of the evidence is without merit. The Supreme Court of Illinois was well within its authority limiting Judge Bone to making findings of fact. (*See*, footnote 17, *supra*).

Petitioner's argument that he was denied due process because he was not allowed to confront his true accusers is again without merit. Petitioner was granted the opportunity through counsel to cross-examine every witness presented by the Commission. (*See*, Bone trans., 8/6/90 and 9/21/90). Petitioner's argument that the Commission was his true accuser is illusory.[21]

Finally, Petitioner's argument that he was denied due process because he was convicted by a biased decision maker is without merit. The Supreme Court of Illinois did not abuse its discretion in hearing this case. Petitioner was not entitled to a change of venue.

The general rule is that a judge or court is not disqualified from conducting contempt proceedings merely because

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[20] *continued*
tion, counsels and advises with such a party in reference to his rights in the suit, selects the kind of pleading and drafts it, and assumes general control of the action in the court, he is engaged in the practice of law.

(*People v. Tinkoff*, 399 Ill. 282, 288, 77 N.E.2d 693, 696 (1948)). There is no question that Petitioner's efforts on behalf of Ms. Halbert constituted the practice of law.

[21] The Supreme Court of Illinois can properly appoint an agent as its prosecutor in a proceeding on a charge of contempt for the unauthorized practice of law. (*People v. Schafer*, 404 Ill. 45, 46, 87 N.E.2d 773, 774 (1949)). Petitioner cites no precedent which holds that he should be able to call his prosecutor as a witness during his trial for contempt. (*See, Petition*, pp. 24-25). Not one scintilla of evidence has been produced which indicates that any agent of the Commission would have knowledge of any fact in dispute in this proceeding.

the contempt was committed against the judge or a court of which he was a member. (*See*, Annot., 64 A.L.R.2d 600 (1959)). The standard to be applied is to look at the nature of the conduct and determine whether it would so inflame a judge that he could not remain impartial. If the conduct does not rise to an inflammatory level, there is no absolute prohibition against that judge or court from hearing the case. (*Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), *People v. Jashunsky*, 51 Ill.2d 220, 282 N.E.2d 1 (1972), and *In re Albert*, 383 Mich. 722, 179 N.W.2d 20 (1970)). In this case, there is no evidence which would indicate that the Supreme Court of Illinois was so inflamed as to prohibit it from hearing this case. In fact, the sanction imposed, a $200 fine, seems to indicate the contrary.

Petitioner's final argument that the Supreme Court of Illinois was merely protecting its own interests and acting as a judge in its own cause is also without merit. No evidence in the record suggests that the Court was doing anything but upholding its authority to regulate the practice of law in the State of Illinois. (*See, Cronson v. Clark, et al.*, 810 F.2d 662, 664 (7th Cir.) (*cert. denied*, 484 U.S. 871 (1987)).

CONCLUSION

For the foregoing reasons, respondent individual members of the Attorney Registration and Disciplinary Commission and the Commission, pray that the Court enter an order denying Petitioner's *Petition for Writ of Certiorari* filed in this cause.

Respectfully submitted,

WILLIAM F. MORAN, III
Counsel of Record

Attorney for Respondents Individual Members of the Attorney Registration and Disciplinary Commission and the Commission

APPENDICES

INDEX TO APPENDICES

APPENDIX A

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
	)	Supreme Court
Alfred H. Greening, Jr.,	)	No. M.R. 5916
	)	
Attorney-Respondent,	)	Administrator's
	)	No. 89-CH-425
No. 1051830.	)	

STIPULATION AS TO FACTS AND ADMISSIBILITY OF DOCUMENTS

John C. O'Malley, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, William F. Moran, III, and Respondent, by his attorney, LeGrand L. Malany, stipulate to the following facts and agree that the exhibits attached to this stipulation are true and correct copies of the documents they purport to be and are admissible without further foundation in this proceeding. Both the Administrator and Respondent reserve the right to argue the relevancy each of these facts and documents has to the issues presented in this proceeding. The Administrator agrees to limit his evidence of Respondent's conduct to the transactions set forth in the *Administrator's Specification of Factual Allegations* filed in this cause.

1. Attached as Exhibit 1 is a certified copy of the Supreme Court of Illinois' entire file in *In re Greening*, M.R. 5916, Administrator's No. 89-CH-425.

2. Attached as Exhibit 2 is a certified copy of the Circuit Court's entire file in the *Estate of William A. Halbert*, Case No. 88-P-97 in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois.

3. Respondent was admitted to the practice of law in the State of Illinois on May 16, 1949.

4. On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88-P-97.

5. On February 19, 1988 the Court in Case No. 88-P-97 entered an order appointing Mrs. Halbert the independent administrator of her late husband's estate.

6. On or about December 22, 1988 Respondent received a notice from the Commission informing him that he was required to register and pay the 1989 annual registration fee in the amount of $140 to the Commission on or before February 1, 1989. Attached as Exhibit 3 is a copy of the notice.

7. Respondent neither registered nor paid the 1989 annual registration fee as required on or before February 1, 1989.

8. On or about February 20, 1989 Respondent received a notice from the Commission notifying him that his registration and the 1989 annual registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys. Attached as Exhibit 4 is a copy of the notice.

9. On March 1, 1989 Respondent's name was removed from the Master Roll of Attorneys for failure to register and pay the 1989 annual registration fee.

10. Respondent was not aware that his name had been removed from the Master Roll until on or about March 22, 1989 when he received a notice from the Commission informing him that his name had been removed. Attached as Exhibit 5 is a copy of the notice.

11. On or about May 2, 1989 the Commission received a letter from Respondent stating, "A recent Fourth district Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois." Attached as Exhibit 6 is a copy of Respondent's letter.

12. On or about May 11, 1989 the Deputy Administrator of the Commission, Jerome Larkin, forwarded a letter to Judge John W. Russell, former Chief Judge of the Circuit Court for the Seventh Judicial Circuit of Illinois, informing Judge Russell that Respondent had been removed from the Master Roll of Attorneys as set forth in paragraph 9 above. A copy of this letter was forwarded to Judge Joseph C. Cavanaugh, who began serving as Chief Judge of the Seventh Judicial Circuit on December 5, 1988. Attached as Exhibit 7 is a copy of Mr. Larkin's letter.

13. On or about June 6, 1989 Respondent received a letter from Mr. Larkin informing him that he was not excused from registering or paying the 1989 annual registration fee and accrued penalties. Enclosed with the letter was a 1989 registration application. Attached as Exhibit 8 is a copy of Mr. Larkin's letter and the attachment described.

14. On or about June 12, 1989 the Commission received a letter from Respondent addressed to Mr. Larkin. The 1989 registration application as set forth in paragraph 13 above had been completed and was attached to the letter. Respondent did not forward to the Commission with his letter the 1989 annual registration fee and accrued penalties. Attached as Exhibit 9 is a copy of Respondent's letter and the attachment described.

15. On July 31, 1989 the Administrator of the Commission filed with the Supreme Court of Illinois an amended report pursuant to Supreme Court Rule 756 concerning Respondent's failure to pay the 1989 annual registration fee and accrued penalties. No specific conduct of Respondent was reported to the Court other than Respondent's failure to pay the 1989 annual registration fee and penalties with his registration. The amended report requested that the Court issue a rule to show cause why Respondent should not be suspended from the practice of law for his wilful failure to comply with Rule 756. Attached as Exhibit 10 is a copy of the amended report.

16. On August 7, 1989 the Supreme Court ruled Respondent to show cause in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of Court for failing to comply with the requirements of Supreme Court Rule 756. Attached as Exhibit 11 is a copy of the Court's order.

17. On August 18, 1989 a copy of the Rule to Show Cause as set forth in paragraph 16 above was personally served on Respondent at his office at 117 West Main Street, Williamsville, Illinois.

18. On September 11, 1989 Respondent filed with the Supreme Court an answer to the Rule to Show Cause as set forth in paragraph 16 above. The answer raised

ten conflicting provisions between Supreme Court Rule 756 and the Illinois Constitution of 1970, two statutory violations, violations of the Fifth and Fourteenth Amendments to the U.S. Constitution and that Rule 756 does not establish any procedure for reporting to the Court nor does it authorize the Commission to charge or seek suspension for the practice of law for the non-payment of a fee. An amendment to the Answer was filed with the Supreme Court on September 22, 1989 raising violations of Art. 1, Par. 2 of the Constitution of the State of Illinois and the Fourteenth Amendment to the United States Constitution. Respondent attached to his answer Cashier's Check No. 61463 drawn on the Williamsville State Bank dated September 11, 1989 in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois" for payment of the past-due 1989 annual registration fee and accrued penalties. Attached as Group Exhibit 12 are copies of Respondent's answer and amended answer.

19. On September 15, 1989 the Administrator filed his response to Respondent's answer as set forth in paragraph 18 above. The Administrator requested that the Supreme Court enter an order enforcing the Rule to Show Cause and suspend Respondent from the practice of law until such time as he complies with the provisions of Supreme Court Rule 756. Attached as Exhibit 13 is a copy of the Administrator's response.

20. On September 27, 1989 the Supreme Court entered an order directing the Clerk of the Court to return to Respondent the check for $230 as set in paragraph 18 above. The Court continued its Rule to Show Cause as set forth in paragraph 16 above, to and including October 4, 1989 to give Respondent the opportunity to make payment of the 1989 annual registration fee and accrued

penalties to the Commission. Attached as Exhibit 14 is a copy of the Court's order.

21. On October 3, 1989 Respondent placed the check as set forth in paragraph 18 above into an escrow account pursuant to a written agreement with the Lincoln Land Service Corporation subject only to the written direction of the Chief Justice of the Supreme Court of Illinois as the Constitutional Administrator of the Court.

22. On October 4, 1989 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 21 above. Attached as Exhibit 15 is a copy of the escrow agreement.

23. On October 20, 1989 Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and gave to the Deputy Clerk, Rosemary M. Skadden, for inclusion in the court file in Case No. 88-P-97, a check payable to the Clerk of the Circuit Court in the amount of $39 drawn on the account of Helen B. Halbert, number 071100269 at the Marine Bank of Springfield, a final accounting, an Estate Closing Letter from the Internal Revenue Service and a "Certificate of Discharge and Determination of Tax" issued by the Illinois Attorney General. Attached as Exhibit 16 is a copy of Ms. Halbert's check. Attached as Exhibit 17 is a copy of the receipt issued by the Circuit Clerk's office evidencing the receipt of the $39 check from Respondent as set forth above. Attached as Exhibit 18 is a copy of the final accounting. Attached as Exhibit 19 is a copy of the estate closing letter as set forth above. Attached as Exhibit 20 is a copy of the "Certificate of Discharge and Determination of Tax" as set forth above.

24. On October 23, 1989 Judge Friedman entered a docket entry in Case No. 88 P 97 which stated:

> On October 20, 1989 Alfred H. Greening appeared to obtain an approval of a final accounting in this estate. The court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out.

25. On or about November 1, 1989 Respondent received a notice from the Commission informing him that he was required to register and pay to the Commission the 1990 annual registration fee on or before January 1, 1990 pursuant to the requirements of Supreme Court Rule 756(a). Attached as Exhibit 21 is a copy of the notice.

26. On or about December 27, 1989 the Commission received from Respondent his completed 1990 registration application and Cashier's Check No. 62356 drawn on the Williamsville State Bank dated December 27, 1989 in the amount of $140 made payable to the "Clerk of the Supreme Court of Illinois" for payment of the 1990 annual registration fee. Respondent indicated on the registration application that he had paid to the Supreme Court on September 11, 1989 the past-due 1989 annual registration fee and accrued penalties. Attached as Exhibit 22 is a copy of the registration application. Attached as Exhibit 23 is a copy of Respondent's check.

27. In prior years Respondent had remitted to the Commission with his annual registration statement, checks made payable to the "Supreme Court of Illinois" or the "Illinois Supreme Court", which checks were negotiated by the Commission.

28. On January 30, 1990 Deborah M. Kennedy, Senior Counsel for the Administrator, informed Respondent by letter that the Administrator had initiated his Investigation No. 89-CI-5186 concerning the same actions of Respondent with respect to the Estate of William A. Halbert which are the subject of this hearing before Judge

J. David Bone. Respondent answered Ms. Kennedy's initial inquiry by letters dated February 9, 1990, March 3, 1990 and March 17, 1990. Attached as Exhibit 24 is a true and correct copy of Administrator's Investigation No. 89-SI-5186.

29. On or about January 11, 1990 Respondent received a letter from Ms. Kennedy returning to him his check for $140 as set forth in paragraph 26 above. Ms. Kennedy informed Respondent that his check did not comply with the provisions of Supreme Court Rule 756(a) as the check was not payable to the Commission. Kennedy requested that Respondent remit a check in accordance with the Rule. Attached as Exhibit 25 is a copy of Ms. Kennedy's letter.

30. On February 7, 1990 Respondent placed the check as set forth in paragraph 26 above into an escrow account pursuant to a written agreement with the Land of Lincoln Service Corporation subject only to the direction of the Chief Justice of the Supreme Court of Illinois as the Constitutional Administrator for the Court.

31. On February 7, 1990 the Administrator filed with the Supreme Court his *Supplemental Report* alleging that Respondent had engaged in the unauthorized practice of law and requesting that Respondent be ruled to show cause why he should not be held in indirect criminal contempt of Court for failing to pay the annual registration fees for 1989 and 1990 and engaging in the unauthorized practice of law after his name was removed from the Master Roll of Attorneys. Attached as Exhibit 26 is a copy of the supplemental report.

32. On February 8, 1990 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 30 above. Attached as Exhibit 27 is a copy of the escrow agreement.

33. On March 26, 1990 the Supreme Court entered an order ruling Respondent to show cause in writing, on or before April 30, 1990, why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law. Attached as Exhibit 28 is a copy of the Court's order.

34. On April 11, 1990 a copy of the Supreme Court's Rule to Show Cause as set forth in paragraph 33 above was personally served on Respondent at his office at 101 West Main Street, Williamsville, Illinois.

35. On April 30, 1990 Respondent filed his written answer to the Court's Rule to Show Cause as set forth in paragraph 33 above. Respondent's answer raised his arguments concerning the Court's lack of original jurisdiction, that the Respondent was both registered and paid, that Respondent had asked Judge Friedman on October 19, 1989 to review the file in this cause so that he could answer on October 20, 1989 whether Respondent could practice in his court on the basis of Respondent's claim that he was registered and paid, that Respondent's conduct did not constitute the practice of law, that not conforming to the payment procedures of a Supreme Court Rule is not a criminal offense, that neither the Administrator or the Commission are criminal prosecutors, that the normal disciplinary channels cannot be bypassed and reiterated Respondent's constitutional objections. No hearing has been held on Respondent's objections. Attached as Exhibit 29 is a copy of Respondent's answer.

36. On May 30, 1990 the Supreme Court entered an order continuing the Rule to Show Cause as set forth in paragraph 33 above and directing Respondent and a representative of the Commission to appear before Circuit Judge J. David Bone for the purpose of an evidentiary hearing in which only findings of fact should be made on

the issues formed by the supplemental report as set forth in paragraph 31 above and Respondent's answer as set forth in paragraph 35 above. Attached as Exhibit 30 is a copy of the Court's order.

37. Between March 1, 1989 and August 6, 1990 Respondent's name has not appeared on the Master Roll of Attorneys registered to practice law in the State of Illinois pursuant to Supreme Court Rule 756.

John C. O'Malley, Administrator
Attorney Registration and
Disciplinary Commission

By: WILLIAM F. MORAN/slb
Counsel for the Administrator

Alfred H. Greening, Jr., Respondent

By: LEGRAND MALANY
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APPENDIX B

IN THE
SUPREME COURT OF ILLINOIS

In the Matter of:	)	
	)	Supreme Court
Alfred H. Greening, Jr.,	)	No. M.R. 5916
	)	
Attorney-Respondent,	)	Administrator's
	)	No. 89-CH-425
No. 1051830.	)	

ADMINISTRATOR'S SPECIFICATIONS OF FACTUAL ALLEGATIONS

John C. O'Malley, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, William F. Moran, III, specifies the allegations he intends to prove beyond a reasonable doubt during the evidentiary hearing to be held in relation to this cause:

1. Respondent was admitted to the practice of law in the State of Illinois on May 16, 1949.

2. On February 19, 1988 Respondent filed in the Circuit Court for the Seventh Judicial Circuit, Sangamon County, a *Petition for Letters of Administration* on behalf of Helen B. Halbert, the spouse and sole surviving heir of William A. Halbert. Mr. Halbert passed away on February 10, 1988. The Clerk of the Circuit Court docketed the matter as Case No. 88 P 97.

3. On February 19, 1988 the Court in Case No. 88 P 97 entered an order appointing Mrs. Halbert the legal representative of her late husband's estate. At all times rele-

vant to this proceeding, Respondent remained attorney of record for Mrs. Halbert.

4. On December 22, 1988 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he was required to register and pay the 1989 annual registration fee in the amount of $140 to the Commission on or before February 1, 1989.

5. Respondent neither registered nor paid the 1989 annual registration fee as required on or before February 1, 1989.

6. On February 20, 1989 the Commission Registrar caused to be forwarded to Respondent a final notice notifying him that his registration and the 1989 annual registration fee were past-due and that if he did not register and pay the fee on or before March 1, 1989, his name would be removed from the Master Roll of Attorneys.

7. On March 1, 1989 Respondent's name was removed from the Master Roll of Attorneys for failure to register and pay the 1989 annual registration fee.

8. On March 22, 1989 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he had been removed from the Master Roll of Attorneys as set forth in paragraph 7 above.

9. On or about May 2, 1989 Respondent forwarded a letter to the Commission stating in its entirety, "A recent Fourth District Appellate Court Case—No. 4-88-0355—informs me that I do not have to be registered with your office to practice law in the State of Illinois."

10. On or about May 11, 1989 the Deputy Administrator of the Commission, Jerome Larkin, forwarded a letter to Judge John W. Russell, former Chief Judge of the Circuit Court for the Seventh Judicial Circuit of Illinois,

informing Judge Russell that Respondent had been removed from the Master Roll of Attorneys as set forth in paragraph 7 above. A copy of this letter was forwarded to Judge Joseph C. Cavanaugh, who began serving as Chief Judge of the Seventh Judicial Circuit on December 5, 1988.

11. On or about June 6, 1989 Mr. Larkin forwarded a letter to Respondent informing him that he was not excused from registering or paying the 1989 annual registration fee and accrued penalties. Enclosed with the letter was a 1989 registration application.

12. On or about June 12, 1989 Respondent forwarded a letter to Mr. Larkin. The 1989 registration application as set forth in paragraph 11 above had been completed and was attached to the letter. Respondent did not forward the 1989 annual registration fee and accrued penalties.

13. On July 31, 1989 the Administrator of the Commission filed with the Supreme court of Illinois an amended report pursuant to Supreme Court Rule 756 concerning Respondent's failure to pay the 1989 annual registration fee and accrued panalties. The amended report requested that the Court issue a rule to show cause why Respondent should not be suspended from the practice of law for his wilful failure to comply with Rule 756.

14. On August 7, 1989 the Supreme Court ruled Respondent to show cause in writing, on or before September 11, 1989, why he should not be suspended from the practice of law until further order of Court for failing to comply with the requirements of Supreme Court Rule 756.

15. On or about August 9, 1989 Respondent telephoned Chief Judge Cavanaugh concerning his status as an attorney registered to practice law in Illinois. Judge Cavanaugh

advised Respondent that he would not be allowed to practice law in the Circuit Court of the Seventh Judicial Circuit of Illinois until he had paid the 1989 annual registration fee and accrued penalties to the Commission as required by Supreme Court Rule 756.

16. On August 18, 1989 a copy of the Rule to Show Cause as set forth in paragraph 14 above was personally served on Respondent at his office at 117 West Main Street, Williamsville, Illinois.

17. On September 11, 1989 Respondent filed with the Supreme Court an answer to the Rule to Show Cause as set forth in paragraph 14 above. Respondent attached to his answer Cashier's check No. 61463 drawn on the Williamsville State Bank dated September 11, 1989 in the amount of $230 made payable to the "Clerk of (the) Supreme Court of Illinois" in purported payment of the past-due 1989 annual registration fee and accrued penalties.

18. On September 15, 1989 the Administrator filed his response to Respondent's answer as set forth in paragraph 17 above. The Administrator requested that the Supreme Court enter an order enforcing the Rule to Show Cause and suspend Respondent from the practice of law until such time as he complies with the provisions of Supreme Court Rule 756.

19. On September 27, 1989 the Supreme Court entered an order directing the Clerk of the Court to return to Respondent the check for $230 as set in paragraph 17 above. The Court continued its Rule to Show Cause to and including October 4, 1989 to give Respondent the opportunity to make payment of the 1989 annual registration fee and accrued penalties to the Commission.

20. On October 3, 1989 Respondent unilaterally placed the check as set forth in paragraph 17 above into an es-

crow account with the Lincoln Land Service Corporation subject to a written escrow agreement which provided that the funds would only be distributed at the direction of the Chief Justice of the Supreme Court of Illinois.

21. On October 4, 1989 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 20 above.

22. On October 20, 1989 Respondent appeared at the office of the Clerk of the Circuit Court of Sangamon County, Probate Division, and paid a court fee in the amount of $39 to Rosemary M. Skadden, an employee of the Clerk's office, in relation to Case No. 88 P 97. Respondent also filed in Case No. 88 P 97 a final accounting, an Estate Closing Letter from the Internal Revenue Service and a Certificate of Discharge and Determination of Tax issued by the Illinois Attorney General.

23. On October 20, 1989 Respondent appeared before Sangamon County Circuit Judge Simon L. Friedman in relation to Case No. 88 P 97. Respondent appeared to obtain approval of the final accounting as set forth in paragraph 22 above. Judge Friedman would not approve the accounting.

24. On October 23, 1989 Judge Friedman entered a docket entry in Case No. 88 P 97 which stated:

> On October 20, 1989 Alfred H. Greening appeared to obtain an approval of a final accounting in this estate. The court informed him he was not allowed to practice before it until such time as he got his matter with the Attorney Registration and Disciplinary Commission straightened out.

25. On or about October 20, 1989, after his appearance before Judge Friedman, Respondent met with Beth A. Wilke, an attorney licensed to practice law in Illinois.

Respondent told Ms. Wilke that Judge Friedman had not allowed him to appear to obtain approval of the final accounting he had filed in Case No. 88 P 97. Respondent told Wilke that the Executor of the Estate, Mrs. Halbert, was out of town.

26. During the meeting as set forth in paragraph 25 above, Respondent gave Ms. Wilke copies of the final accounting, Estate Tax Closing Letter and Certificate of Discharge and Determination of Tax he had filed in Case No. 88 P 97. Respondent requested that Wilke review these documents and do whatever was required to close this estate.

27. On October 27, 1989 Ms. Wilke appeared before Judge Friedman in Case No. 88 P 97. Judge Friedman approved the final accounting set forth above. At that time Wilke presented an *Order of Discharge* which she had drafted. Judge Friedman signed the order and Mrs. Halbert was discharged as Executor of the Estate.

28. On November 11, 1989 the Commission Registrar caused to be forwarded to Respondent a notice informing him that he was required to register and pay to the Commission the 1990 annual registration fee on or before January 1, 1990 pursuant to the requirements of Supreme Court Rule 756(a). In addition, Respondent was notified that the 1989 annual registration fee and accrued penalties were still outstanding.

29. On or about December 27, 1989 Respondent forwarded to the Commission his completed 1990 registration application and Cashier's Check No. 62356 drawn on the Williamsville State Bank dated December 27, 1989 in the amount of $140 made payable to the "Clerk of the Supreme Court of Illinois" in purported payment of the 1990 annual registration fee. Respondent indicated on the

registration application that he had paid to the Supreme Court on September 11, 1989 the past-due 1989 annual registration fee and accrued penalties.

30. On January 22, 1990 the Commission Registrar caused to be forwarded to Respondent a final notice notifying him that the 1990 annual registration fee was past-due, as well as the 1989 annual registration fee and accrued penalties. The notice informed Respondent that his name was still removed from the Master Roll of Attorneys as set forth in paragraph 7 above.

31. On January 31, 1990 Deborah M. Kennedy, Senior Counsel for the Administrator, caused a letter to be sent to Respondent returning to him his check for $140 as set forth in paragraph 29 above. Ms. Kennedy informed Respondent that his check did not comply with the provisions of Supreme Court Rule 756(a) as the check was not payable to the Commission. Kennedy requested that Respondent remit a check in accordance with the Rule.

32. On February 7, 1990 Respondent unilaterally placed the check as set forth in paragraph 29 above into an escrow account with the Land of Lincoln Service Corporation subject to a written escrow agreement which provided that the funds would only be distributed at the direction of the Chief Justice of the Supreme Court of Illinois.

33. On February 7, 1990 the Administrator filed his *Supplemental Report* with the Supreme Court alleging that Respondent had engaged in the unauthorized practice of law and requesting that Respondent be ruled to show cause why he should not be held in indirect criminal contempt of Court for failing to pay the annual registration fees for 1989 and 1990 and engaging in the unauthor-

ized practice of law after his name was removed from the Master Roll of Attorneys.

34. On February 8, 1990 Respondent filed with the Supreme Court a copy of the Escrow Agreement concerning the arrangement as set forth in paragraph 32 above.

35. On March 26, 1990 the Supreme Court entered an order ruling Respondent to show cause in writing, on or before July 30, 1990, why he should not be held in indirect criminal contempt of Court for engaging in the unauthorized practice of law.

36. On April 11, 1990 a copy of the Supreme Court's Rule to Show Cause as set forth in paragraph 35 above was personally served on Respondent at his office at 101 West Main Street, Williamsville, Illinois.

37. On April 30, 1990 Respondent filed his written answer to the Court's Rule to Show Cause as set forth in paragraph 35 above.

38. On May 30, 1990 the Supreme Court entered an order continuing the Rule to Show Cause as set forth in paragraph 35 above and directing Respondent and a representative of the Commission to appear before Circuit Judge J. David Bone for the purpose of an evidentiary hearing in which only findings of fact should be made on the issues formed by the supplemental report as set forth in paragraph 34 above and Respondent's answer as set forth in paragraph 37 above.

39. As of the date of this pleading, Respondent's name does not appear on the Master Roll of Attorneys due to his failure to pay the 1989 and 1990 annual registration fees and accrued penalties to the Commission.

John C. O'Malley, Administrator
Attorney Registration and
Disciplinary Commission

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